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NASA Procedural Requirements

COMPLIANCE IS MANDATORY**NPR 2081.1**Effective Date: February 17,
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Subject: Nondiscrimination in Federally Assisted and Conducted Programs**Responsible Office: Office of Diversity & Equal Opportunity**[| TOC](#) | [Preface](#) | [Chapter1](#) | [Chapter2](#) | [Chapter3](#) | [Chapter4](#) | [Chapter5](#) | [AppendixA](#) |
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APPENDIX B. Additional Information on Complaint Procedures Under the Civil Rights Act of 1964 (Title VI), the Education Amendments Age of 1972 (Title IX), the Rehabilitation Act of 1973 (Section 504), and the Age Discrimination Act

B.1. Evaluating Complaints of Employment Discrimination

B.1.1. Title VI and Title IX Employment Complaints

B.1.1.1. While Title VI was not meant to be the primary Federal vehicle to prohibit employment discrimination (that vehicle is Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-1 - 2000e-17), it does forbid employment discrimination by recipients in certain situations. If a *primary objective* of the Federal financial assistance to a recipient is to *promote employment*, then the recipient's practices are subject to Title VI (42 U.S.C. § 2000d-3). In addition, a recipient's employment practices also are subject to Title VI where those practices *negatively affect the delivery of services to ultimate beneficiaries*. The following may be useful in conceptualizing Title VI's employment coverage:

a. Examples of "Primary Objective" Coverage.

(1) A recipient builds a temporary shelter with funds designed to provide temporary assistance to dislocated individuals. The employment practices of the recipient, with respect to the construction of such facility, are not subject to Title VI. However, if the recipient built the same facility with funds received through a public works program whose primary objective is to generate employment, the employment practices are subject to Title VI. [\[36\]](#)

(2) A school district employee claims a Title VI violation based on the assertion that Federal funds paid the employee's salary in part. The assertion is insufficient since the employee failed to show that the primary objective of the Federal funds was employment rather than general funding of school programs (see Reynolds v. School District No. 1, Denver, Colorado, 69 F.3d 1523, 1531-32 (10th Cir. 1995) (motion to dismiss granted due to plaintiff's failure to show that the primary purpose of Federal assistance was to provide employment)). [\[37\]](#)

b. Employment Practices Having a Negative Effect on the Delivery of Services to Ultimate Title VI Funding Beneficiaries: Courts have found this provision of Title VI's employment coverage applicable.

(1) Where "faculty integration is essential to student desegregation" (see United States v. Jefferson County Board of Education, 372 F.2d 836, 883 (5th Cir. 1966)); and

(2) Where patients of a state mental health system challenged segregated employment practices affecting delivery of services to patients (see Marable v. Alabama Mental Health Board, 297 F. Supp. 291, 297 (M.S. Ala. 1969)). [\[38\]](#)

c. Certain Title VI and Title IX employment complaints over which both OEOP and the U.S. Equal Employment Opportunity Commission (EEOC) may have jurisdiction must be "referred" to EEOC within 30 days of receipt of the complaints, in accordance with governmentwide regulations (29 CFR §§ 1691.1 - 1691.13). Also, under these regulations, all employment complaints over which OEOP lacks jurisdiction, but over which EEOC may have

jurisdiction, must be "transferred" to EEOC.

B.1.1.2. Where OEOP receives a complaint of employment discrimination against a recipient that is covered by both Title VI (and/or Title IX) and Title VII, OEOP will refer the complaint to EEOC for investigation and conciliation. If EEOC determines that there is discrimination and is unable to resolve the complaint, OEOP will evaluate the matter, "with due weight to the EEOC's determination that reasonable cause exists," and take appropriate enforcement action (29 CFR § 1691.10(a)).

B.1.1.3. Where a complaint alleges a pattern and practice of discrimination and there is dual coverage, OEOP has the option of keeping the complaint rather than deferring it to EEOC.

B.1.1.4. The following guidelines apply to the handling of any Title VI or Title IX employment complaint. Within 10 days of OEOP's receipt of the complaint, OEOP will notify the recipient and complainant of the following:

- a. That OEOP has received the complaint;
- b. That OEOP will determine within 30 days of receipt of the complaint whether the complaint will be referred to EEOC; and
- c. That OEOP's determination regarding whether the complaint is complete or timely under OEOP's case processing rules will be deferred until it has been determined whether OEOP or EEOC will investigate the complaint.

B.1.1.5. The letter to the recipient must also set forth the date, place, and alleged circumstances of the discriminatory act set forth in the complaint.

B.1.1.6. Within 30 days after the receipt of the complaint, OEOP will determine whether the complaint will be investigated by OEOP or referred to EEOC, and will so notify the complainant and recipient.

B.1.1.7. Where the entire complaint is referred to EEOC, the complaint will be closed. The letters notifying the complainant and recipient of referral to EEOC must state that OEOP is closing the complaint. No determination of completeness or timeliness need be made.

B.1.1.8. Where OEOP retains any portion of the complaint (e.g., allegations of discrimination in services), the original case will be closed upon referral to EEOC and a new case number assigned to the portion retained by OEOP.

B.1.2. Age Discrimination Complaints

B.1.2.1. An age discrimination complaint is timely if it is filed within 180 days of the date the complainant first had knowledge of the alleged discrimination.

B.1.2.2. OEOP does not have jurisdiction over employment complaints involving federally assisted programs and activities under the Age Discrimination Act.

B.1.2.3. Employment complaints filed by persons 40 and older are referred to the appropriate EEOC office, and the OEOP complaint is closed.

B.1.2.4. Employment complaints filed by persons under 40 are not within the jurisdiction of EEOC and may be closed with notice to the complainant that there is no jurisdiction under the Act.

B.1.2.5. If the complaint alleges age discrimination in employment that is within EEOC's jurisdiction and also contains allegations of discrimination in services within the jurisdiction of OEOP, the complaint is split into two separate cases. Each is given its own case number, the age employment complaint is referred to EEOC with the OEOP age employment case being closed, and OEOP proceeds with the age services complaint.

B.1.3. Disability Complaints

B.1.3.1. Disability employment complaints shall be closed if OEOP has no jurisdiction under Section 504. If the complaint is against an employer with fewer than 15 employees, it shall be referred to the DOJ. If the employer has 15 or more employees, the complaint shall be referred to the EEOC.

B.1.3.2. The handling of complaints over which OEOP has jurisdiction under Section 504 will vary depending on several factors. If the complaint is a pattern and practice complaint or an individual complaint that also has other nonemployment issues, it must be retained by OEOP. If the complaint is an individual complaint only, whether filed only with OEOP or with both OEOP and the EEOC, the complaint will be referred to the EEOC unless the complainant indicates a desire for it to remain with OEOP.

B.1.3.3. Thus, for single-issue individual employment disability complaints filed with OEOP only or with both OEOP and the EEOC, within 10 days of OEOP's receipt of the complaint, OEOP will notify the recipient and complainant of the following:

- a. That OEOP has received the complaint;

- b. That OEOP will refer the complaint to the EEOC unless OEOP receives a written request within 20 days that OEOP retains it;
- c. That there are differences in the processing of complaints under Section 504, and potential remedies may differ;
- d. That OEOP's determination regarding whether the complaint is complete or timely under OEOP's case processing rules will be deferred until it has been determined which agency will investigate the complaint.

B.1.3.4. If the complainant elects to have the complaint remain with OEOP, within 30 days OEOP must make the decisions regarding completeness and timeliness.

B.2. OEOP's Authority for Obtaining Information in Complaint Investigations

B.2.1. OEOP has the right to complete access during a recipient's normal business hours to all information maintained by the recipient needed to determine compliance status on those issues under investigation. See 14 CFR § 1250.105 (c).

B.2.2. Generally, this includes access to oral information from a recipient's employees as well as to written or nonwritten information, such as electronic storage media, microfilming, retrieval systems, and photocopies maintained by the recipient. OEOP, not the recipient, decides what information is relevant to a determination of compliance.

B.2.3. OEOP has no legal authority to require the complainant or any other nonrecipients to provide information. (See below for enforcement action regarding any case where the complainant's refusal to provide information interferes with OEOP's ability to investigate the case.)

B.2.4. Limitations on Obtaining Information

B.2.4.1. Actions Constituting Denial of Access. It is a clear denial of access to information when a recipient either explicitly or by its overall conduct:

- a. Refuses to permit OEOP access to written or unwritten information, such as electronic storage media, microfilm, retrieval systems, photocopies, and the recipient's facilities during the recipient's normal business hours;
- b. Refuses to permit OEOP access to employees during recipient's normal business hours;
- c. Fails to provide information to which it has access if one of its employees refuses to do so or to provide access to information maintained exclusively by an employee in his/her official capacity; or
- d. Refuses to complete Office of Management and Budget (OMB) approved compliance and survey forms relevant to an investigation (e.g., OS/CR 532-1 and 532-2 survey forms).

B.2.4.2. OEOP's Response to Refusals to Provide Data or Access to Witnesses.

In instances where the recipient states an intent to refuse to provide OEOP with requested information or access to records or witnesses, OEOP will do the following:

- a. If the refusal is stated orally, either in person or over the telephone, the investigator shall attempt to ascertain the exact basis for the recipient's refusal, and, where possible, attempt to explain OEOP's authority or provide other information to address the recipient's concerns.
- b. If the investigator is unable to obtain access to the requested information, the investigator shall consult with OEOP staff (when onsite, this shall be done over the telephone whenever possible before the investigator leaves the recipient's premises). Where appropriate, OEOP staff shall discuss the refusal to provide information directly with the recipient's representative.

B.2.4.3. Where attempts to persuade a recipient to provide information have failed, a letter shall be prepared, by OEOP staff, setting forth OEOP's authority to obtain access to the information and addressing as fully as possible any particular concerns expressed by the recipient.

B.2.4.4. Whenever the office determines that voluntary compliance cannot be achieved (generally not to exceed 90 days from the date of the request), the case shall be referred for enforcement.

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